IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 573 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE and
MR.JUSTICE R.R.JAIN

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

CHIMANBHAI M SOLANKI

Versus

STATE OF GUJ

Appearance:

MR PM DAVE for Appellant

MR.S.R. DIVETIA, A.P.P.for Respondent

CORAM : MR.JUSTICE S.D.DAVE and
MR.JUSTICE R.R.JAIN

Date of decision: 12/12/96

ORAL JUDGEMENT (Per Jain, J.):

The appellant/original accused No.1 came to be tried by the Court of Additional Sessions Judge, Panchmahals at Godhra, for offences punishable under Sections 302 and

376 of the Indian Penal Code. Two other accused were also charged for offences punishable under Section 201 read with Section 114 of IPC. The learned Additional Sessions Judge, vide his judgment and order dated 8.4.1994 passed in Sessions Case No.10 of 1993, acquitted original accused Nos.2 and 3 who are not before us and convicted the present appellant/original accused No.1 for life imprisonment under Section 302 and for seven years under Section 376 of IPC. Both the sentences are to run concurrently. Aggrieved by the judgment and order the appellant has preferred this appeal.

Briefly stated, the facts giving rise to this case are as under:

That on 24.8.1992, deceased Ushaben aged about 15 years went to her field for grazing cattle. As the deceased Ushaben did not return but the cattle alone returned at about 5.00 P.M. to the residence, the family members started inquiring about her whereabouts. The complainant, father of the deceased, proceeded towards the field. On reaching the field he saw the deadbody of the deceased Ushaben with a ribbon around her neck, blood stains on face, two teeth broken, some injuries on neck, garments in torn condition with injuries on other parts of her body. On seeing this, he went to his residence and informed his cousin brother Chimanbhai and Ramanbhai. Thereafter Chimanbhai approached Sarpanch of village Sonavati, the original accused No.2 - Dahyabhai Shambhubhai Solanki, and informed about the incident. In the meanwhile, as other villagers also came to know about the incident, they all, in company of said Sarpanch (original accused No.2), went to the place of incident and saw the deadbody of deceased Ushaben. As alleged, in consultation with Sarpanch, the deadbody of Ushaben was brought to their village . The villagers present inter-se discussed about the incident as well as next course of action to be taken. As alleged, at that time, the Sarpanch- original accused No.2, advised the complainant, father of the deceased, not to file police complaint since it would involve unnecessary expenditure as a result of which no police action was initiated immediately. It is also the case of the prosecution that in the meanwhile, sister-in-law, Gangaben, examined the body of the deceased and found that it was bleeding from private parts. It is the case of the prosecution that next day on 25.8.1996 the deadbody of Ushaben was cremated in presence of villagers as per Hindu Rites and other post-death customary rituals were also performed on 26.8.1992. On 26.8.1992 one Prabhatbhai Chhitabhai, resident of Gadoth, had met the complainant's brother

Maganbhai and is alleged to have told him that at about 2 P.M., on the day of the incident, when he was passing through the road between the agricultural fields, he had seen the appellant/accused No.1 running therefrom and thus had suspected the role of the appellant in commission of the offence. As alleged, at the time of post-death ceremony, all the relatives had come and after discussion had decided to lodge police complaint. It is in this background that the FIR was lodged on 4.9.1992 against the present appellant and two other accused alleging role of appellant in commission of offence. In this background the police had investigated the case and submitted chargee-sheet against the appellant/original accused No.1 for the offence under Section 302 read with Section 376 of IPC and against the accused Nos.2 and 3 for the offence under Section 201 read with Section 114 of IPC in the Court of learned Judicial Magistrate, First Class, Halol. Since the offences with which the accused were charged were exclusively triable by the Court of Sessions, the learned Magistrate was pleased to commit the matter to the Court of Sessions as provided under Section 209 of the Criminal Procedure Code. The learned Additional Sessions Judge, as stated above, on appreciation of evidence, convicted the present appellant, original accused No.1, and acquitted the rest of the accused for the offences with which they were charged.

We have heard Mr. P.M. Dave, the learned advocate for the appellant and Mr. S.R. Divetia, learned A.P.P. for State. On perusing the evidence, at the outset, we have no hesitation in saying that this is a case of purely circumstantial evidence. Since there is no eye witness to the incident the entire evidence will have to be appreciated in the light of circumstances leading to the commission of offence and connecting the appellant with the crime.

It cannot be gainsaid that the circumstances, if proved beyond reasonable doubt in chain-link to connect the accused in commission of offence, by themselves are sufficient to convict an accused. In other words, even in absence of direct evidence also, the circumstances would be sufficient for basing conviction. In this case, as we have seen, there is no eye witness and, therefore, the question of appreciation of evidence in relation to trustworthiness and reliability does not arise.

Mr. Dave, the learned advocate for the appellant, has taken us to two main circumstances which are borne out from the record, i.e.,

(i) Emitting from the evidence of P.W.3 Prabhatbhai Chhitabhai, resident of Gadoth, Ex.26, that he saw the accused running from the field at about 2 P.M. on the day of the incident;

(ii) That the accused No.1 was seen roaming around the field (where the incident had taken place) at about 12 noon on the day of incident.

Before we discuss the relevance of both these circumstances qua proving the commission of offence, in our opinion, it would be worthwhile to refer to some of the important evidence which has been brought on record by the prosecution.

According to the prosecution, the deadbody was not sent for post-mortem examination as a result of which the question whether the death was homicidal, suicidal or accidental could not be determined. Since deadbody was not examined, the question whether the deceased Ushaben was ravished could not be established by medical evidence. Similarly, it is an admitted fact that the clothes of deceased were burnt and hence could not be seized by the police for examination by Forensic Science Laboratory. Furthermore, the clothes of appellant were recovered after a long time after wash hence were not in original form, i.e., the clothes recovered were washed off and thereby no incriminating evidence from the clothes of accused could be collected and placed before the Court. Thus it is clear that the prosecution has utterly failed to establish the fact that the death was homicidal and that the deceased Ushaben was ravished.

Keeping these facts in mind, now we proceed to discuss the circumstantial evidence which have been relied upon by the prosecution.

The first question arising for our consideration is whether the circumstances emitted from the evidence of P.W.3 and P.W.4 are reliable and trustworthy and if yes, to what extent? The second question would be whether is there sufficient evidence to connect the appellant with commission of the offence?

P.W.3, Prabhatbhai Chhitabhai, Ex.26 has deposed that on the date of the incident he saw the accused No.1 running from the field in question, that is, where the incident had taken place. But in the next breath in cross-examination he says that this fact was not stated by him in his police statement. Not only that but the fact that on the next day when he was passing through the

nearby field he saw Maganbhai and had told him that he saw the accused No.1 in the field in question and therefore he suspected that the accused No.1 has committed the offence. But this fact is also not stated by him in his police statement. In our opinion, this witness for the first time is saying so on oath in his testimony before the Court. This is substantial improvement in his statement on oath. The improvement on very material aspect shaking the reliability of his testimony hence would be disastrous to rely upon such evidence for basing conviction in absence of any other cogent, concrete and corroborative piece of evidence. Similarly, P.W.4, Balwantbhai Babarbhai, Ex.29, who is alleged to have been in his field on the day of the incident, says that at about 12 noon he saw the accused No.1 roaming around the field. In the para 8 of his cross-examination, he has admitted that despite seeing accused No.1 around the field he did not talk to him nor even inquired anything in this regard. It has been brought on record that during all this time he was sitting and cutting grass in the field. Despite knowing the fact that at the relevant time and place deceased Ushaben was alone in her field and that the accused No.1 was seen roaming around the field he did not inform the complainant nor even his family members. Agricultural fields of P.W.4 and that of the complainant are adjacent to each other and they belong to same village and yet in the facts and circumstances of the case he does not inform any person exhibits unnatural conduct of this witness. In ordinary course, when a teenage girl is alone in the field and somebody is seen roaming around the field, in suspicious circumstances, one would naturally inquire and try to talk to the suspected person or inform relatives. Here in this case this witness does not do anything. How unnatural is this conduct? Under these circumstances, we feel that this witness also does not stand to the test of reliability and trustworthiness and hence cannot be believed. Consequently, the so-called circumstances also do not get established.

Even leaving aside the contradictions and other test of reliability and trustworthiness, even the evidence taken as it is, in our opinion, only establishes the presence of accused No.1 around the place and time of occurrence but nonetheless connect the appellant with commission of offence. As a cardinal rule, the circumstances must be established beyond all reasonable doubt and should be possible of only one view i.e., connecting the accused with commission of offence. The circumstance would be suggestive of presence only without leading to any act of the appellant in commission of offence therefore even if

the circumstances as shown by the learned A.P.P. are accepted in its face value, are not sufficient to connect the appellant with commission of the offence. Thus, from the evidence on record, it is crystal clear that the prosecution has not been able to establish the prosecution case either by direct evidence or circumstantial evidence. The learned trial Judge has placed heavy reliance upon these so-called circumstances which even if accepted do not complete the chain-link. Consequently, merely on the basis of the circumstantial discussed above, conviction cannot be based. We are of the view that the court below has taken patently an erroneous view in holding that the prosecution has established the case. Consequently, the findings given by the court below are erroneous, improper and call for interference.

Mr. Dave, learned advocate for the appellant, has also drawn our attention to one more infirmity which cuts the prosecution case and renders highly doubtful. Though the incident occurred on 24.8.1992 yet the FIR was lodged on 4.9.1992. There is a delay of about 11 days. It has come on record that the complainant and his relatives had several rounds of meetings i.e., at cremation field and during post-death rituals and thereafter FIR came to be lodged. Thus, suppression of correct facts and fabrication cannot be ruled out and thus the whole case is rendered doubtful.

Since for the want of reliable evidence, the prosecution has failed to establish the charges levelled against the appellant, the impugned judgment and order of conviction deserves to be set aside. Accordingly, the impugned judgment and order of conviction is set aside. The appellant is acquitted of the offences under Section 302 read with Section 376 of the IPC.

In the result, the appeal stands allowed. The impugned judgment and order dated 8.4.1994 passed by the learned Additional Sessions Judge, Panchmahals at Godhra is quashed and set aside. The appellant is acquitted. Since the appellant is behind the bars, he is ordered to be set at liberty forthwith if not required in connection with any other case.